

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

RUSTY STRICKLAND, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT
OF AGRICULTURE, *et al.*,

Defendants.

Case No. 2:24-cv-00060-Z

**DEFENDANTS' NOTICE OF COMPLIANCE WITH
THE COURT'S PRELIMINARY INJUNCTION ORDER**

On June 7, 2024, this Court issued an order granting in part Plaintiffs' motion for a preliminary injunction. *See* Order, ECF No. 26. As part of that order, the Court enjoined Defendants "from making or increasing payments, or providing any additional relief, based on its 'socially disadvantaged farmer or rancher' designation" under Emergency Relief Program 2022 (ERP 2022), "the only active Program capable of being enjoined." *Id.* at 1, 22 (citing 88 Fed. Reg. 77,408). At the same time, the Court provided that "Defendants may [] continue to apply progressive factoring on future relief applications, so long as that is done independently of any race- or sex-based considerations." *Id.* at 22. Given the demarcation provided in the Court's order, Defendants submit this notice to detail how they have complied with the Court's injunction.

Upon issuance of the injunction on June 7, Defendants immediately took actions to halt all payments under ERP 2022. Because Defendants understand the injunction to apply prospectively to any payments under ERP 2022, Defendants began analyzing (1) what

changes to the current payment software and administrative systems would be needed to resume payments while the preliminary injunction is in place; and (2) how those payments can be structured. Defendants are separately determining when the application period will close. Because this analysis is ongoing, Defendants have not yet resumed payments under ERP 2022. Any payment Defendants make under ERP 2022 after those payments resume would, consistent with the injunction, not include making or increasing payments, or providing any additional relief, based on the use of the socially disadvantaged designation. The application periods for the other programs challenged in this lawsuit have ended and those programs are not subject to the injunction—accordingly, USDA is not making any separate changes with respect to those programs (including, for example, how those programs make payments for errors, omissions or appeals).

USDA will also replicate its approach on ERP 2022 for any potential future payment under the Emergency Livestock Relief Program (ELRP) 2022. As stated in the Notification of Funding Availability for ELRP 2022, “[i]f funds remain available after initial payments, a second payment of up to 75 percent may be issued.” 88 FR 66362 (Sept. 27, 2023). Initial payments have been made and, as set forth in the Ducheneaux Decl., ECF No. 21-1 at ¶ 83, funding remains available, does not expire, and payments may be issued until funding is exhausted. However, if USDA decides to make a second round of payments under the ELRP 2022, USDA will make that second round of payments consistent with the terms of the preliminary injunction, including not making or increasing any such payments based on the use of the socially disadvantaged designation.

Dated: June 27, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

LESLEY FARBY
Assistant Branch Director

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV (NY Bar No. 4918793)
FAITH E. LOWRY (TX Bar No. 24099560)
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20530
Tel: (202) 305-2532
Fax: (202) 616-8470
E-mail: alexander.v.sverdlov@usdoj.gov

CERTIFICATE OF SERVICE

On June 27, 2024, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the Court's electronic case filing system. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV
Trial Attorney
U.S. Department of Justice